Supreme Court, U.S.
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NO. 94-211

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

Benton Musslewhite, the Law Offices of
Benton Musslewhite, and Peter Manangkalangi,
Petitioners,
v.
Reading & Bates Petroleum Company,
Reading & Bates Exploration Company, and
Reading & Bates Drilling Company,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To the United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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48 pp

Question Presented

Whether the district court abused its discretion by exercising its power to enforce a permanent injunction enjoining the prosecution of a state action asserting a claim which had been dismissed with prejudice in a prior federal action.

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BENTON MUSSLEWHITE, the LAW OFFICES OF BENTON MUSSLEWHITE, and PETER MANANGKALANGI,

Petitioners,

v.

READING & BATES PETROLEUM COMPANY, READING & BATES EXPLORATION COMPANY, and READING & BATES DRILLING COMPANY,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company, file this Brief in Opposition to Petitioner's Petition for Writ of Certiorari.

Statement of the Case

This case involves the power of a federal district court to enforce its own final judgment dismissing a claim with prejudice. Petitioner Benton Musslewhite filed an action on behalf of Peter Manangkalangi in the United States District

Court for the Southern District of Texas on June 19, 1979, seeking to recover damages for personal injuries allegedly sustained by Petitioner Peter Manangkalangi on June 21, 1977, while Manangkalangi was employed aboard a vessel engaged in an oil well workover operation in the Java Sea off Indonesia (the "federal action").[1/] On December 28, 1983, Musslewhite filed an action asserting the same claim on behalf of Manangkalangi in the 164th District Court of Harris County, Texas (the "state action").[2/] On April 5, 1984, a Memorandum and Order was entered by the federal court granting Respondents' Motion for Entry of Final Judgment. The Memorandum and Order specifically provided:

> . . . the claims set forth in Plaintiff's complaint and first amended complaint are DISMISSED with prejudice.
>
> * * *
>
> This is a FINAL JUDGMENT.[3/]

There was no appeal from this Final Judgment. However, the state action remained pending, but inactive.

1/ Civil Action No. H-79-1253; in the United States District Court for the Southern District of Texas, Houston Division. A copy of the Original Complaint in the federal action is set forth in Appendix A at page 1a.

2/ Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas. A copy of the Petition filed in the state action is set forth in Appendix B at page 6a.

3/ A copy of the Memorandum and Order of April 5, 1984 is set forth in Appendix C at page 13a.

On June 10, 1986, Reading & Bates filed an action (the "injunction action") in the United States District Court for the Southern District of Texas seeking to permanently enjoin the further prosecution of the state action on the basis of the federal Final Judgment entered on April 5, 1984. A Final Judgment was entered in the injunction action on March 3, 1992, permanently enjoining Manangkalangi and his attorney Musslewhite from prosecuting the state action or any claims arising from the injuries allegedly sustained in June of 1977.[4/] There was no appeal from this Final Judgment.

Contrary to Petitioner's assertions, the 1992 Injunction was based not on *forum non conveniens*, but on the *res judicata* effect of the Final Judgment in the original federal action. The Final Judgment in the injunction action provides:

> Defendants [Peter Manangkalangi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalangi] are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea on June 21, 1977 in any state or federal court in this country.

On July 15, 1993, the 164th District Court of Harris County dismissed the state action for want of prosecution. On August 16, 1993, Musslewhite filed a Motion for New Trial, Rehearing, to Reconsider Dismissal and to Reinstate

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[4/] A copy of the Injunction is set forth in Appendix D at page 15a.

the Case in the state action.[5/] In response to this Motion the state court vacated its dismissal order and reinstated the state action. Reading & Bates, in order to protect its rights under the 1984 Final Judgment and the 1992 Permanent Injunction, filed a motion in federal court requesting that Musslewhite and Manangkalangi be held in contempt of court for violating the injunction by filing the Motion for New Trial in the state action.

On December 10, 1993, following an evidentiary hearing, the federal court found that the filing of the Motion for New Trial in state court violated the federal injunction and held Musslewhite and his client in civil contempt of court. The contempt order of December 10, 1993, *inter alia,* directed the Petitioner to inform the state court of the injunction and the contempt order; to withdraw the motion to reinstate the state district court and to take actions necessary to have the state court dismiss the state action. Musslewhite was to report back to the federal court on December 17, 1993 and advise as to the actions he had taken to comply with the contempt order. Musslewhite did not take any action to dismiss the state action. After a second evidentiary hearing, the federal court entered the second contempt order, remanding Musslewhite to the custody of the United States Marshall during week days until he purged himself of contempt.

Reasons for Denying the Writ

This case concerns the power of a federal court to protect or effectuate its judgments by enjoining proceedings in a state court. Such power is expressly granted to the federal courts by Section 2283 of Title 28, United States Code, which provides:

5/ A copy of this Motion is set forth in Appendix E at page 17a.

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The issue in this case is simply whether the district court abused its discretion in finding Mr. Musslewhite in contempt of court for seeking to prosecute a state action identical to a federal action which had been finally concluded by the entry of a final judgment dismissing the claim with prejudice, and ordering Musslewhite to purge himself of that contempt by undoing the effects of his efforts to reinstate the state court action by causing it to be dismissed. The district court's orders are not in conflict with any federal precedent. The district court did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Finally, the case does not involve such an important question of federal law which has not been, but should be settled by this Court. No amount of strained semantics can convert this case into one warranting review by this Court on certiorari.

The Petitioner incorrectly characterizes this case as one involving a question of federal preemption. ***See Chick Kam Choo v. Exxon***, 486 U.S. 140 (1988). Relying on the Court's recent decision in ***American Dredging v . Miller***, 114 S. Ct. 981 (1994), the Petitioner attempts to reopen the 1984 final judgment because the basis of that dismissal was the *forum non conveniens* doctrine. While it is true that the original federal action was dismissed on the basis of *forum non conveniens,* the district court went on to direct the Petitioner to institute proceedings in Indonesia within a set period of time. Upon his failure to do so, a final judgment was entered dismissing the claim with prejudice. No appeal was taken from this judgment; and it is now ten years too

late to argue that this final judgment does not preclude the assertion of the same claim in state court.

The filing of the motion to reinstate the state court action after it had been dismissed constituted a violation of the 1992 federal injunction prohibiting the prosecution of the state action. Therefore, the district court acted properly in finding Musslewhite in contempt and ordering him to purge himself of that contempt. The district court's order of December 13, 1993, finding Benton Musslewhite in civil contempt neither expanded nor modified the March 5, 1992 injunction. The issue of the "vagueness" of the injunction is not reviewable in this contempt proceeding. Moreover, the injunction of March 5, 1992, and the contempt order of December 13, 1993, were not vague in their use of the term "prosecution." The term clearly encompasses the actions taken by the Petitioner in state court.

I.

The Decision Below Neither Departs from the Usual and Accepted Course of Judicial Proceedings nor Involves an Unsettled Question of Federal Law.

A. The District Court did not Abuse its Discretion.

The district court did not abuse its discretion in finding Mr. Musslewhite in contempt of court, and ordering him to purge himself of contempt by undoing the effects of his efforts to reinstate the state court action. Indeed, this action was the only proper response to the Petitioner's violation of the injunction. The injunction herein, based on the *res judicata* force of the prior unappealed federal Final Judgment dismissing a claim with prejudice, cannot be construed, as the Petitioner contends, to allow for the continued maintenance of the enjoined action to exist on the state court

docket in perpetuity. Such an injunction is intended to dispose of the enjoined action. The affirmative action of the Petitioner to reinstate the state action frustrated the intent of the federal injunction, which was to enforce the *res judicata* effect of the prior final judgment entered by the district court, and clearly constituted "prosecution" of the state court action.

Petitioner's justification for this disobedience of the clear language of the injunction is his contention that ***American Dredging Co. v. Miller***, 114 S. Ct. 981 (1994) somehow relieves him from the effects of the 1992 Injunction and the 1984 Final Judgment dismissing Manangkalangi's claim with prejudice. Petitioner refuses to recognize that the injunction rendered against him on March 19, 1992 had nothing to do with the current state of federal *forum non conveniens* law. It enforced the *res judicata* effect of an unappealed federal final judgment entered against the Petitioner's client in March of 1984, which dismissed his personal injury claim with prejudice. The cases which Petitioner cites have nothing to with *res judicata*. They do not affect the present suit in any way, nor could they possibly justify or excuse the Petitioner's conduct.

The Petitioner's actions in state court, as well as his refusal to comply with the district court's contempt order, demonstrate his repeated and flagrant disregard for the orders of the district court. Far from being an abuse of discretion, the district court's action in enforcing its injunction and ordering the Petitioner to purge his contempt was the only proper response to the Petitioner's conduct.

B. The District Court's Contempt Order Neither Modified nor Expanded the March 5, 1992 Injunction.

The contempt order did not modify or expand the injunction; it simply ordered Musslewhite to purge himself of contempt and return the state action to the status in which it was in immediately prior to his act of contempt. It is axiomatic that a court may, subsequent to a finding of contempt, order the violator to take affirmative action to purge himself of contempt. ***FDIC v. Blain***, 808 F.2d 395 (5th Cir. 1987). This is true even when, as in the present case, the injunction violated was proscriptive. ***Blain*** concerned a trustee who was enjoined from depleting a particular trust account. Finding that the trustee had spent over $1,000,000.00 of trust funds in violation of this injunction, the court found the trustee in contempt and ordered the trustee to take whatever affirmative steps were necessary, including borrowing funds if necessary, to return the money to the account.

It is unquestioned that a United States District Court has the power to order a person who violates an injunction to take affirmative steps to undo the effects of the violation. *See, e.g.* ***Cannon v. Loyola University of Chicago***, 687 F. Supp. 424 (N.D. Ill. 1988), *also* 676 F. Supp. 823 (N.D. Ill. 1987).[6/] The Petitioner asserts, without authority, a rule that would make it impossible for a federal court to enforce

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[6/] *Cannon* concerned a woman perennially rejected in her application to various medical schools, and her husband, who perennially filed groundless lawsuits against the offending medical schools on her behalf. The United States District Court for the Northern District of Illinois entered an injunction which specifically forbade the husband from reinstating one such action. The husband moved to reinstate the action, thus violating the injunction, and was found in contempt. The court ordered him to dismiss the case, and fined him $100.00 per day until he had purged herself of contempt. *Id.* at 425.

its own injunctive orders. In the ***Blain*** situation, the court would be empowered to enjoin the trustee from improperly spending the trust money, but powerless to order its return if the trustee spent money in violation of the injunction. Such a position cannot be sustained.

There is no question that a court may not simultaneously hold a party in contempt of an earlier injunction and enter a new or modified injunction without weighing relevant criteria and making factual findings necessary to support the new injunction. ***International Ass'n of Machinists v. Eastern Airlines, Inc.***, 849 F.2d 1481, 1486 (D.C. Cir. 1988).[7/] The present case is quite different from the factual situation in ***Eastern Airlines***. The contempt order rendered by the Southern District of Texas did not enjoin action of the Petitioner different from the previously enjoined activities, it merely ordered the Petitioner to undo what had been done in violation of the injunction.

C. The Issue of "Vagueness" is not Properly Before this Court

What was being sought on appeal below and is being sought here is an opportunity to collaterally attack the *1992 Injunction*, principally on the basis of vagueness. Apparently realizing that the substance of an injunction cannot be

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[7/] In *Eastern Airlines*, the carrier was enjoined from spinning off its fleet service employees into a wholly owned subsidiary. The airline announced that it would sell its entire East Coast shuttle operations to a subsidiary of Eastern's corporate parent. The district court found the airline in contempt of the injunction, and enjoined the announced sale. On appeal, the D.C. Circuit found that the announced action was not violative of the first injunction, and that the contempt order forbidding the sale constituted a new injunction, unsupported by the weighing of relevant criteria and factual findings necessary to support a new injunction.

collaterally attacked in contempt proceedings, ***U.S. v. United Mine Workers***, 330 U.S. 258 (1946), Petitioner avers that the *contempt order* is vague in prohibiting prosecution of the case. The contempt order does not, of course, prohibit prosecution of the case. It simply instructs Petitioner on how to purge himself of contempt, and orders him to do so. This is an impermissible attempt to collaterally attack the substance of an unappealed final judgment and injunction through contempt proceedings.

D. The First Contempt Order was not Vague in Prohibiting Prosecution of the State Court Lawsuit.

Even if the "vagueness" of the injunction were properly at issue, Musslewhite's argument would lack merit. While this argument is at best misplaced, it is also best responded to by allowing the document to speak for itself. The injunction is clear and unambiguous. It is difficult to mistake the meaning of the statement "Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas." Musslewhite contends that by simply seeking to have the case reinstated, that he did not actually "prosecute" the action. The filing of a post-dismissal motion to reinstate would clearly be described as "prosecution" of an action in all but the most twisted interpretation of the word.[8/] The meaning of prosecution remains the same under the Texas Rules of Civil Procedure, and includes the institution and carrying on of that suit.[9/] The motion to

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[8/] Webster's New Collegiate Dictionary (G. & C. Merriam Co., 1961) defines "prosecution" as "The institution and carrying on of a suit or proceedings in a court of law or equity, specif. of a criminal suit."

[9/] The Texas Rules of Civil Procedure consistently use the term "prosecution" to refer to the entirety of the representation of a

(continued...)

reinstate could have only one purpose: the continued prosecution of the suit to a conclusion, which was the very thing enjoined.[10/]

[9/](...continued)

plaintiff's case: "Any party to a suit may appear and *prosecute* or defend his rights therein, either in person or by an attorney of the court." Tx. R. Civ. P. 7. "Any party in a suit or proceeding pending in this state may, by sworn written motion stating that he believes the suit or proceeding is being *prosecuted* or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act." Tx. R. Civ. P. 12. If Petitioner had filed his state court motion without authority, Rule 12 would have required him to show authority for his prosecution of Mr. Manangkalangi's case. Indeed, to pursue a claim in the courts of the State of Texas is by definition to "prosecute" that claim. Petitioner's action in seeking reinstatement of the state action was by statutory definition "prosecution" of that action. His argument to the contrary is frivolous.

[10/] The Bankruptcy cases Petitioner cites for the proposition that his motion to reinstate does not constitute prosecution are inapposite. It must first be noted that In Re Cobb, 88 B.R. 119 (Bankr. W.D. Tex. 1988), involved the automatic stay contained in Bankruptcy Code § 362, 11 U.S.C. § 362, and did not involve a permanent injunction prohibiting the further assertion of a claim. The case does not in any way assist in defining the word "prosecution" as used in the injunction. Second, the rationale behind an automatic stay in bankruptcy is entirely different from that underlying a permanent injunction. The automatic stay enjoyed by a debtor during bankruptcy proceedings is designed to force a standstill in proceedings outside of the bankruptcy court until the bankruptcy court can determine which court should deal with a controversy. It is by definition temporary. All parties to the bankruptcy action contemplate that the stay is for a finite duration, and will be lifted. Section 362(c)(2) states that the automatic stay will be automatically discontinued when the bankruptcy case is closed or dismissed, or a

(continued...)

The 1992 Injunction was within the grant of power given to the federal courts under Section 2283 of Title 28, United States Code, to protect or effectuate their judgments. The Petitioner's efforts to have the state action reinstated after its dismissal for want of prosecution, which was already barred by the prior federal judgment, was a violation of the injunction, justifying the district court to find the Petitioner in contempt and impose appropriate sanctions if the Petitioner refused to purge himself of contempt. The district court did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Furthermore, the case does not involve any unsettled questions of federal law which should be settled by this Court.

II.

There is No Conflict of Decision

Petitioner asserts that the district court's orders are contrary to decisions of this Court and Circuit Courts of Appeal in several respects. In doing so the Petitioner attempts to create conflict where none exists.

[10/](...continued)

discharge is granted or denied. The automatic stay is not a permanent injunction. It not only makes perfect sense, but is in fact necessary, for a proceeding subject to an automatic bankruptcy stay to be allowed to remain alive during the pendency of the automatic stay.

This reasoning does not apply to a permanent injunction, such as that entered March 5, 1992. The permanent enjoining of the prosecution of an action is tantamount to ordering its dismissal. Moreover, when the assertion of an action whose prosecution is enjoined is barred on the basis of *res judicata*, the clear purpose of the injunction is to bring the claim to a final, complete, and permanent conclusion.

Petitioner contends that the contempt orders below conflict with numerous decisions which require that an injunction specify precisely what acts are forbidden. ***E.g. Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n***, 389 U.S. 75 (1967). Petitioner also argues, without authority, that the enforcement of such an "ambiguous" order would somehow violate due process. First, as noted above, this issue of the "vagueness" of the injunction is not at issue in this contempt proceeding. Second, even if the vagueness of the injunction were before this Court, Petitioner's argument would lack merit as the injunction was clear and unambiguous. There is no conflict on this point.

Petitioner also argues that the district court's orders conflict with decisions holding that a federal court cannot modify an injunction in the context of a contempt hearing. ***E.g. NBA Properties, Inc. v. Gold***, 895 F.2d 30 (1st Cir. 1990). As noted above, there was no such modification. The district court simply ordered Musslewhite to purge himself of contempt and return the state action to the status in which it was in immediately prior to his act of contempt. It is undisputed that a court may, subsequent to a finding of contempt, order the violator to take affirmative action to purge himself of contempt. As the district court did not modify the injunction, there is no conflict on this point.

Finally, Petitioner avers that the district court's orders conflict with this Court's holding in ***Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.***, 312 U.S. 287, 298 (1941) that an injunction should be dissolved or modified when there has been a change in the law. This contention clearly demonstrates the inconsistency of the Petitioner's arguments. After first contending that the Court impermissibly modified the injunction in its contempt order; Petitioner now declares that the district court *should* have modified its 1992 Injunction in light of alleged changes in

the law.[11/] Suffice to say, as detailed above, there has been no change in the law concerning the *res judicata* effect of a prior with prejudice federal final judgment. No modification of the injunction is necessary. A Final, With Prejudice, Judgment of a United States District Court entered ten years before ***Miller***, is just as valid and binding on Petitioner after ***Miller***. The district court's orders did not conflict with ***Milkwagon Drivers***, or any other precedent.

[11/] The proper procedure to seek a modification of an injunction or any other final judgment is provided for under Rule 60(b) of the Federal Rules of Civil Procedure. Petitioner in fact filed such a motion, which was denied by the district court on December 4, 1993. A copy of this motion is set forth in Appendix F at page 23a. A copy of the Order denying the motion is set forth in Appendix G at page 25a. No appeal was taken from this order. The question of whether the injunction should be modified was not before the district court in the contempt proceedings, and is not now before this Court. ***United Mine Workers, supra***.

Conclusion

Respondents Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company respectfully submit that for the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.

James Patrick Cooney
Counsel for Respondents,
Reading & Bates Petroleum Company,
Reading & Bates Exploration Company and
Reading & Bates Drilling Company

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PETER MANANGKALANGI	§	
	§	C. A. NO.
V.	§	H-79-1253
	§	
READING & BATES	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PETER MANANGKALANGI, hereinafter referred to as "Plaintiff", complaining of READING & BATES, hereinafter referred to as "Defendant", and for cause of action would respectfully show unto this Honorable Court and Jury the following, to-wit:

I.

Plaintiff is a resident citizen of Jakarta, Indonesia.

Defendant is a corporation authorized to do business in the State of Texas and may be served with process by and through the Secretary of State, by serving its registered agent, C.T. Corporation Systems, Republic National Bank Building, Dallas Ii. Texas, 75201.

This is an action within the admiralty and maritime jurisdiction of this Court. It is brought pursuant to 46

USCA, Section 688, commonly called the Jones Act, and all amendments thereto. Your Plaintiff would show that he is a seaman and as such is entitled to benefits under the general maritime law.

III.

At all times material hereto, your Plaintiff would show that he was employed by the Defendant, Reading & Bates, as a "roughneck" aboard the drilling barge, Giant Mariner, which it is Plaintiff's information and belief is owned and/or operated by said Defendant. On or about the 20th day of June, 1977, while Plaintiff was employed aboard the drilling barge Giant Mariner, which was located in the Java Sea, he was ordered by his immediate supervisor, Defendant's servant, agent and employee to open a back pressure valve in a highdrill system. Said valve was under pressure and when Plaintiff complied with his supervisor's instructions, the top of the valve blew off and struck Plaintiff in the testicles, causing him serious, disabling and permanent injuries and damages, all as hereinafter alleged.

IV.

Your Plaintiff would show that the Defendant, its agents, servants and employees were negligent and the aforementioned drilling barge was unseaworthy in the following respects, to-wit:

(a) Failure to supply Plaintiff with a safe place in which to work;

(b) Failure to supply Plaintiff with a sufficient number of competent co-employees and property trained personnel;

(c) Failure to properly instruct Plaintiff in the course of his duties;

(d) Failure to properly superintend and supervise the work in which Plaintiff was involved at the time of his injury;

(e) Failure to promulgate and enforce proper and safe rules for the safe conduct of the work in which Plaintiff was involved and to warn Plaintiff of the impending dangers inherent in his work;

(f) Failure to properly comply with existing safety regulations and rules as required by governmental authorities, previously promulgated industry guidelines and/or safety regulations of the Defendant;

(g) Failure to provide Plaintiff with adequate tools and other equipment with which to perform the duties assigned him at the time and on the occasion in question;

h) Failure to supply the Plaintiff with proper safety devices, said safety devices being widely used within the industry and readily available to the Defendant;

(i) Failure to maintain the exact location in which the injury to Plaintiff occurred in safe working condition;

(j) Failure to properly outfit the vessel upon which Plaintiff was serving with the necessary equipment, personnel and devices with which

to properly perform the duties to which Plaintiff was assigned;

(k) The actions of the Plaintiff's supervisors were negligent in that they failed to use ordinary and prudent care in ordering the Plaintiff to perform the duties which resulted in the injuries complained of herein;

(l) Plaintiff would further show that there were substantial other acts of negligence and/or conditions of unseaworthiness which were either permitted to exist at the time of the injury to your Plaintiff or where in existence at such time.

V.

Plaintiff would show that by reason of the injuries sustained as a result of the accident of June 20, 1977, he has been rendered totally and permanently sterile and impotent. Plaintiff would show that he has been caused to suffer and sustain great physical pain and mental anguish in the past and, in all reasonable medical probability, will continue to suffer and sustain great physical pain and mental anguish in the indefinite future, if not for the rest of his life. Plaintiff has been caused to incur reasonable and necessary medical expenses in the past and, in all reasonable medical probability, will be caused to incur reasonable and necessary medical expenses in the indefinite future. Plaintiff has been caused to suffer and sustain the loss of earnings in the past and his earning capacity in the future had been diminished. Plaintiff would show that he was 23 years of age at the time of the accident in question with a work-life expectancy of 42 years and a life expectancy of 47 years.

VI.

By reason of the above and foregoing, Plaintiff has been damaged in the sum of at least FIVE HUNDRED THOUSAND AND NO/100 ($500,000.00) DOLLARS, for which he comes now and sues.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein; that upon final trial hereof, Plaintiff have judgment against the Defendant for the sum heretofore pled, with interest thereon from the date of trial, all costs of Court, medical expenses, attorney's fees, lost wages, and for such other and further relief, both general and special, to which Plaintiff may show himself justly entitled to receive.

Respectfully submitted,

LAW OFFICES OF BENTON MUSSLEWHITE, INC.

/s/

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609 Fannin, Suite 1901
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520 0621

APPENDIX B

NO. 83-75297

PETER MANANGKALANGI	§	IN THE DISTRICT
	§	COURT OF
VS.	§	
	§	HARRIS COUNTY,
READING & BATES	§	TEXAS
COMPANY; READING &	§	
BATES EXPLORATION	§	
COMPANY; READING &	§	164TH JUDICIAL
BATES DRILLING COMPANY;	§	DISTRICT
IIAPCO DIVISION OF	§	
NATOMAS INTERNATIONAL	§	
CORPORATION and JARDINE	§	
FEARNLEY OFFSHORE	§	
OPERATIONS	§	

PLAINTIFF'S ORIGINAL PETITION
(Jury Trial Requested)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PETER MANANGKALANGI, hereinafter referred to as Plaintiff, complaining of READING & BATES COMPANY; READING & BATES EXPLORATION COMPANY; READING & BATES DRILLING COMPANY; IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION and JARDINE FEARNLEY OFFSHORE OPERATIONS, hereinafter referred to as Defendants and for cause of action would respectfully show the Court as follows, to-wit:

I.

Plaintiff is a citizen of Indonesia.

The Defendant, READING & BATES COMPANY, is a Delaware corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service of process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, READING & BATES EXPLORATION COMPANY, is a Oklahoma corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, READING & BATES DRILLING COMPANY, is a Oklahoma corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service of process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION, is a foreign corporation which is doing business in the State of Texas within the meaning of Article 2031(b), Texas Revised Civil Statutes (Vernon's). However, IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION, maintains no registered agent for service of process within the State of Texas, and maintains no regular place of business in Texas. Summons may be served upon this Defendant by serving the Secretary of State of Texas, who shall forward the Petition

to the Defendant's agent for service, Five Pillars Office Park, Box 2759, Los Angeles, California 90017.

The Defendant, JARDINE FEARNLEY OFFSHORE OPERATIONS, is a foreign corporation which is doing business in Texas within the meaning of Article 2031(b), Texas Revised Civil Statutes (Vernon's). However, JARDINE FEARNLEY OFFSHORE OPERATIONS, maintains no registered agent for service of process within the State of Texas, and maintains no regular place of business in Texas. Summons may be served upon this Defendant by serving the Secretary of State of Texas who shall forward the Petition to the Defendant's agent for service, 15th Floor, Malayan Credit House, 96 Somerset Road. Singapore 9, Singapore.

II.

This suit is being brought under Article 4678, Revised Civil Statutes of Texas, which provides as follows:

> "Whenever the death or personal injury of a citizen of this State or of the United States or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or Country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or Country or of this State, such right of action may be enforced on the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such actions by the statutes of this States. All matters pertaining to such action in the

courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case."

III.

In connection with the foregoing, your Plaintiff would show that the nation of which the Plaintiff is a citizen has "equal treaty rights" with the United States. In connection with the foregoing statute, your Plaintiff would show that the Court should apply American (either maritime and/or Texas common law) to this case. Plaintiff would show that there are substantial and/or significant contacts, within the meaning of the Texas conflict of law rules, between the Defendants and the transaction in question and the United States and Texas. Therefore, the application of American and Texas law is mandated.

IV.

In the alternative, and only in the alternative, Plaintiff requests the Court to apply the substantive law of Indonesia which the Plaintiff would show is similar to the law of Texas with respect to liability and damages in this case. Notice is hereby given that the law of Indonesia may be relied upon as a means of recovery herein.

V.

In addition of all the foregoing remedies, your Plaintiff sues under the Jones Act, 46 U.S.C. §688. These claims are brought under the provisions of the Jones Act which allows the Plaintiff to sue in State Court and also under the Pendant Jurisdiction of this Court.

Moreover, this suit is brought under the general maritime law of the United States.

VII.

In addition, Plaintiff hereby expressly pleads all treaties between the United States and the nation of which the Plaintiff is a citizen. Under the terms of those treaties, the Plaintiff is guaranteed the same access to the Courts of the United States that American citizens have. It would be a violation of those treaties for this Court to dismiss this case on any grounds or to deny the access to our Courts by these citizens pursuant to the terms and provisions of such treaties. In particular, the Plaintiff now pleads the multilateral treaty entitled "Shipowners Liability (Sick and Injured Seamen) Convention of 1936, 54 Stat. 1963. In particular, your Plaintiff pleads Article 11 thereof which provides as follows:

> "This convention in national laws are regulations relating to benefits under this convention shall be so interpreted and enforced as to insure a quality of treatment to all seamen irrespective of nationality, domicile or race."

VIII.

In connection with these claims, Plaintiff would show that on or about the 21st day of June, 1977, the Plaintiff, PETER MANANGKALANGI, was the seaman employee of Defendants and a member of the crew of the vessel "GIANT MARINER", owned and operated by the Defendants, when, by reason of the negligence of the Defendants, jointly and severally, and/or the unseaworthiness of the vessel and its appurtenances, he suffered and sustained serious injuries, all of which caused the damages hereinafter alleged. Plaintiff would show that the negligence of the Defendants was a

proximate cause and/or was a cause, in whole or in part, at least to the slightest extent, of the serious injuries and the ensuing damages of the Plaintiff. Moreover, your Plaintiff would show that the unseaworthiness of the vessel and its appurtenances was a proximate cause and/or a cause, in whole or in part, at least to the slightest extent, of the serious injuries and the ensuing damages. Moreover, the Defendants are guilty of liability and causation under the law of Texas and/or the Jones Act and/or the general maritime law and/or the law of Indonesia, and thus responsible for Plaintiff's damages under such laws.

IX.

By reason of all the foregoing your Plaintiff would show that he has been caused to suffer and sustain permanent and grievous injuries to his testicles and body generally and thus has suffered a loss of earnings in the past and future; physical pain and mental anguish in the past and future; medical expenses in the past and future; loss of maintenance and cure and unearned wages in the past and future; and has generally been damaged in the sum and amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 ($1,500,000.00) DOLLARS, for which amount he comes now and sues. Plaintiff would show that the foregoing is merely an estimate of damages and would show the Court that the damages far exceed the minimum jurisdictional requirements of the Court and Plaintiff actually sues for whatever damages the Court and/or Jury might award him, but in no event less than the amount hereinabove alleged.

X.

Plaintiff would show that the conduct of the Defendants in this case was tantamount to a conscious and willful disregard for the rights of the Plaintiff and others

similarly situated and therefore Plaintiff is entitled to punitive damages in the amount that should be assessed by the jury, as punishment to these Defendants, and as an example to others who might be tempted to engage in the same kind of conscious and willful misconduct, of no less than two times the actual damages awarded.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited to appear and answer herein, and upon trial hereof that Plaintiff have his actual damages in the sum and amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 ($1,500,000.00) DOLLARS, and punitive damages in an amount of no less than two times actual damages, and such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

LAW OFFICES OF BENTON MUSSLEWHITE, INC.

By: /s/ Benton Musslewhite

Benton Musslewhite
609 Fannin, Suite 517
Houston, Texas 77002
(713) 222-2288
TBA No. 14752000

OF COUNSEL:
FRED H. BENNERS
Attorney at Law
3104 Fairmont
Dallas, Texas 75201

APPENDIX C

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
F I L E D
APR 5 1984
JESSE E. CLARK, CLERK
BY DEPUTY: A. Allen

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PETER MANANGKALANGI,	§	
Plaintiff,	§	
vs.	§	C. A.
	§	H-79-1253
READING & BATES , ET AL.,	§	
Defendants.	§	

MEMORANDUM AND ORDER

On October 13, 1983, this Court conditionally granted Defendants' Motion to Dismiss on the basis of forum non conveniens. In the Amended Memorandum and Order signed and entered on that date, the Court provided that the judgment could become final if Plaintiff failed to file this action in Indonesia within ninety days of the date of entry. On March 1, 1984, Defendants' filed their Motion for Entry of Final Judgment, alleging that the ninety day grace period had expired and that Plaintiff had failed to initiate this action in Indonesia.

On March 13, 1984, the Court entered an order directing Plaintiff to respond to Defendants' motion within 15 days. The Order further provided that "[s]hould Plaintiff fail to respond within the time alloted, or provide proof of filing in Indonesia, or show good cause excusing such failure to file . . ." the Court would enter a final judgment without further hearing. It now appearing that Plaintiff has failed to respond and that no just cause exists for further delay in this protracted litigation, the Court hereby ORDERS:

Defendants' Motion for Entry of Final Judgment is GRANTED. Accordingly, the claims set forth in Plaintiff's complaint and first amended complaint are DISMISSED with prejudice.

Costs in this action are to be taxed against Plaintiff.

This is a FINAL JUDGMENT.

The Clerk shall file this Memorandum and Order and provide all parties with a true copy.

DONE at Houston, Texas, this 5 day of April 1984.

/s/
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
MAR 05 1992
Jesse E. Clark, Clerk
By Deputy: /s/ illegible

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES	§	
PETROLEUM CO.; ET AL.,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION
	§	NO. H-86-2671
PETER MANANGKALNGI;	§	
ET AL.,	§	
Defendants.	§	

FINAL JUDGMENT

Pursuant to the Court's orders of January 22, 1992 and of this date, the Court

ORDERS that final summary judgment is GRANTED in favor of Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company and Reading & Bates Drilling Company against Defendant Peter Manangkalngi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalngi. The Court

ORDERS that Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalngi on the offshore oil well workover operations in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country. Furthermore, Defendants shall pay costs of court, as well as Plaintiffs' attorney's fees in the amount of $4,564.50, with post judgment interest in the amount of 4.21% per annum.

SIGNED this 3rd day of March, 1992, at Houston, Texas.

/s/ James DeAnda
JAMES DeANDA, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX E

NO. 83-75297

PETER MANANGKALANGI	§	
	§	IN THE DISTRICT
VS.	§	COURT OF HARRIS
	§	COUNTY, TEXAS
READING & BATES COMPANY	§	164TH JUDICIAL
	§	DISTRICT

MOTION FOR NEW TRIAL, REHEARING, TO RECONSIDER DISMISSAL, ORDER AND TO REINSTATE THIS CASE

COMES NOW, Plaintiff, and moves the Court for a new trial, rehearing to reconsider dismissal order and to reinstate this case, and for such motion would respectfully show the Court as follows:

I.
Procedural Facts

On June 28, 1993, the Court notified the parties that this case would be dismissed for want of prosecution unless notice was received by the Court, presenting good cause to the Court as to why this course should be retained upon the docket, by August 18, 1993. On July 2, 1993, the Defendants filed a Motion to Dismiss, seeking dismissal on the basis of a permanent injunction entered by the Federal District Court on March 3, 1992. However, the Defendants did not have that Motion set for submission. Therefore, as provided by Local Rule 3.3.3, no response was due until the Defendants set a submission date, and then the Plaintiff would have until "two working days before the date of submission: in which to file a response. Thereafter, before

the time for responding to the notice of intent to dismiss for failure to prosecute (response date not until August 18, 1993) and before any time for responding to the Motion to Dismiss had become fixed (because Defendant never requested a submission date), this Court, without a hearing, without notice to Plaintiff, and without due process to the Plaintiff, dismissed this case. Such dismissal took place on July 15, 1993.

II.

Response to the Notice of Intent to Dismiss
for Want of Prosecution in Absence of Good Cause

Good cause exists for not dismissing this case because of the injunctions which have been imposed by the federal court against the prosecution in the case. The sequence of events concerning the injunction are as follows: a) prior to October 13, 1983, Plaintiff filed suit in Houston Federal Court; b) the Court dismissed the case on the ground of forum non conveniens on October 13, 1983; c) this suit was filed in the State Court on December 28, 1983; d) thereafter, the Defendants filed an injunction action in the Federal Court; e) on November 26, 1986, the Federal Court entered an agreed stay order which had the effect of staying the proceedings in this Court pending the determination by the Supreme Court of the United States of the issue of whether a Federal Court, which has previously dismissed a case on the ground of forum non conveniens, can enjoin the subsequent prosecution of the same case in state court; f) subsequently, the Supreme Court did grant Writ of Certiorari in such a case, Chick Kam Choo v. Exxon Corp., and the Supreme Court of the United States, in 1988, handed down its decision, holding that a federal court, which has previously dismissed a case on the ground of forum non conveniens, cannot enjoin such case when it is subsequently

filed in state court, see 108 S.Ct 1684 (1988) (copy attached): g) despite the Supreme Court decision, the Federal District Court thereafter granted the permanent injunction which is attached to Defendants recent Motion to Dismiss in this case; h) the Plaintiffs have filed, in the Federal Court, a Rule 60(b) Motion, the purpose of which is to seek to have the Federal Court, in compliance with the mandate in Chick Kam Choo, to dissolve the injunction and/or to reinstate the federal case and stay it pending a decision in the cases before the Supreme Court of the United States and the Texas Supreme Court, as discussed below.

Good cause exists with respect to retaining this case upon the docket because of the stay, and then the injunction, which has been in force and effect in the Federal Court, and which has thus made prosecution in this Court untenable. Moreover, on August 30, 1991, the Defendants moved to abate the proceedings in this Court, on the basis of the proceedings in the Federal Court. For all of the foregoing reasons, it is clear that good cause exists for retaining this case upon the docket and the Plaintiff now requests the Court, once this case is reinstated, to retain same upon the docket.

III.

Response to the Motion to Dismiss of Defendants

The Defendants should not have filed their Motion to Dismiss because of the pending the injunction granted by the Federal Court. However, since they have filed such a motion, Plaintiff is left with no choice but to respond. Obviously, the best course of action is for the Plaintiff to directly, in the Federal Court (rather than collaterally, in this Court), attack the permanent injunction order entered by the

Federal Court. There is no question that the Federal Court's permanent injunction is improper in view of Chick Kam Choo v. Exxon.

The essential basis of the Defendants motion for a permanent injunction in the Federal Court after the 1988 Chick Kam Choo decision was handed down, is that, because Mr. Manangkalangi's injuries occurred at sea, a so called "maritime" federal forum non conveniens doctrine preempts state forum non conveniens law. That contention is based upon the holding in Chick Kam Choo v. Exxon, 817 F.2d 307 (5th Cir. 1987) to the effect that such a "federal maritime form non conveniens doctrine" does not exist and that it does preempt. The Supreme Court, in reversing 817 F.2d 307, reversed the injunction portion of the decision, but pretermitted a decision upon the preemption portion of the decision. See decision attached.

To be sure, the Federal Court should have left the preemption issue to this Court rather than invading the province of this Court by enjoining it on the basis of the preemption doctrine. In any event, the Supreme Court of Texas now has before it that very issue, namely the issue of whether or not a federal "maritime" forum non conveniens doctrine preempts state forum non conveniens law in a maritime case. See Exxon Corp. v. Chick Kam Choo, Cause No. D-1693, Sup. Ct. of Texas. The present law of this state can be found in the Court of Appeals decision in that case, in which the court held that federal "maritime" forum non conveniens law does not preempt state forum non conveniens law. See 821 S.W.2d 190 (Tex, Civ. App. - 14th, Houston, 1991). Moreover, the holding by the Fifth Circuit in the reversed Chick Kam Choo case, that a special federal "maritime" forum non conveniens exists, seems to have been overruled by In Re Aircrash New Orleans, 821 F.2d 1147 (5th Cir. 1987) (en banc). In any event, that

precise issue is not pending before the Supreme Court of the United States in the case of American Dredging Co. v. Miller, No. 91-1950. It is pending there by way of a Grant of Writ of Certiorari from a decision of the Louisiana Supreme Court in the same case, see 595 So.2d 615 (La. S.Ct. 1992).

Therefore, as can be seen from the Rule 60(b) motion, we are requesting the Federal Court in this case, in view of the pending dispositive decisions by the courts of last resort of both Texas and the United States, to reinstate that case and defer action upon it pending the decision of the Supreme Court of the United States in American Dredging Co. v. Miller and/or the decision of the Supreme Court of Texas in Chick Kam Choo v. Exxon.

For the foregoing reasons, this Court should reinstate this case, and, at the very least, rescind the order granting the dismissal motion and stay all proceedings pending the disposition of the preemption issue in the Supreme Court of the United States and/or the Supreme Court of Texas.

IV.

Good Cause Exists for Reinstatement and the Court Should Reinstate

For all of the above reasons, it is clear that the Federal Court, in this case, was premature in granting a permanent injunction and that this Court was inadvertently in error in granting the dismissal motion of the Defendant.

In any event, there is no question but that Plaintiffs due process rights, the local rules of this Court, and the Texas Rules of Civil Procedure, have all been violated by virtue of the Court's action in granting the dismissal motion

without a submission date having ever been set, without notice to the Plaintiff, without a date having been set for response to be filed by Plaintiff, and without overall due process.

Therefore, it is clear that justice demands that this case be reinstated and that same be stayed pending the decision of the Federal District Court on our Rule 60(b) Motion, the Supreme Court of the United States in American Dredging Co. v. Miller and/or the Supreme Court of the State of Texas in Chick Kam Choo v. Exxon.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays as in the preceding paragraph.

Respectfully submitted,

/s/ Benton Musslewhite
BENTON MUSSLEWHITE
TBA#: 14752000
1250 Lyric Centre
440 Louisiana
Houston, Texas 77002
(713) 222-2288
(713) 222-0319 Fax

ATTORNEY FOR PLAINTIFF

APPENDIX F

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM CO.; ET AL., Plaintiffs,	§	
	§	CIVIL ACTION
vs.	§	NO. H-86-2671
PETER MANANGKALANGI; ET AL. Defendants.	§	

RULE 60(b) MOTION

COMES NOW Defendants, and moves the Court to reinstate this cause under Rule 60(b), F.R.C.P., and dissolve the pending injunction, and for such motion would respectfully show the Court as follows:

I.

On March 3, 1992, the Court entered a order permanently enjoining the Plaintiffs from pursuing their state court action. However, it is undisputed that the Defendants have never had a trial on the merits, in this Court or in the state court. The basis for granting a permanent injunction is in conflict with Supreme Court law, Chick Kam Choo v. Exxon, 108 S.Ct 1684 (1988). The only possible basis for the Court, in the fact of Chick Kam Choo, to enjoin the Defendants in the state court action is the so called "maritime

forum non conveniens doctrine" which the Plaintiffs in this case have contended preempts state forum non conveniens law. See Chick Kam Choo v. Exxon, 817 F.2d 307 (5th Cir. 1987) rev'd on other gnds. 108 S.Ct. 1684 and Chick Kam Choo v. Exxon, 821 SW.2d 190 (14th Court - Hou-1991), writ pending D-1693, Supreme Court of Texas. However, that very issue is pending before the Supreme Court of the United States in American Dredging Company v. Miller, #91-1950 and that case is set for Argument on November 9, 1993 at 11:00 a.m.

II.

Defendants now request the Court to grant the reinstatement and hold this case on the docket, pending the decision of the Supreme Court of the United States in American Dredging. If the Court holds that there is a maritime forum non conveniens doctrine in federal court and that such doctrine does preempt state law, then the Court should reaffirm its dismissal with prejudice. However, if the Court in American Dredging holds that there is no such thing as the "maritime forum non conveniens doctrine" and/or that such doctrine does not preempt state forum non conveniens law, then this Court should immediately dissolve such permanent injunction and allow the Defendants to proceed in state court.

Respectfully submitted,

/s/ Julius Larry / jc with permission
JULIUS LARRY
Federal Bar # 14030
3730 Kirby, Suite 1180
Houston, Texas 77098
(713) 942-0320

ATTORNEY FOR DEFENDANTS

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
DEC 6 1993
MICHAEL N. MILBY, CLERK
BY DEPUTY: CK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM CO.; ET AL., Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. H-86-2671
PETER MANANGKALANGI; ET AL., Defendants.	§	

ORDER

Came to be heard on this date Defendants' Rule 60(b) Motion for this Court to hold this case on the docket pending the decision of the United States Supreme Court in American Dredging Company v. Miller, #91-1950, and the Court being of the opinion that said motion should in all things be **denied**.

IT IS HEREBY ORDERED that **Defendants' Rule 60(b) Motion is DENIED**.

SIGNED this 4th day of December, 1993.

/s/ Ewing Werlein, J.
JUDGE PRESIDING